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October 28, 1999

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VIA HAND DELIVERY

Ms. Magalie R. Salas
Secretary
Federal Communications Commission
The Portals
Room TW-B204
445 12th Street, S.W.
Washington, D.C. 20554

RECEIVED
OCT 28 1999
FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

RE: Reply Comments of Metro One Telecommunications, Inc. in CC Docket No. 99-273: In the Matter of Provision of Directory Listing Information under the Telecommunications Act of 1934, As Amended: Notice of Proposed Rulemaking

Dear Ms. Salas:

On behalf of Metro One Telecommunications, Inc. ("Metro One"), we submit herewith for filing an original and four (4) copies of Reply Comments in the above-referenced proceeding.

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PAUL, HASTINGS, JANOFSKY & WALKER LLP

Ms. Magalie R. Salas
October 28, 1999
Page 2

We also enclose an extra copy of this transmittal letter that is to be date-stamped and returned in the envelope provided. Should any questions arise regarding this submission, please contact Metro One's undersigned legal counsel.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Michelle W. Cohen". The signature is fluid and cursive, with the first name "Michelle" being more prominent.

Michelle W. Cohen
for PAUL, HASTINGS, JANOFSKY & WALKER LLP

Enclosures

cc: Al McCloud, Federal Communications Commission, Common Carrier Bureau
(w/diskette only)
International Transcription Services, Inc. (w/encl. and diskette)

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BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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OCT 28 1999

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of

Provision of Directory Listing Information
under the Telecommunications Act of 1934,
As Amended

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CC Docket No. 99-273

REPLY COMMENTS OF METRO ONE TELECOMMUNICATIONS, INC.

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October 28, 1999

Metro One Telecommunications, Inc.
October 28, 1999

SUMMARY

The record in this proceeding establishes that the Commission must act expeditiously to mandate access by directory assistance (“DA”) providers to local exchange carriers’ (“LECs”) directory listings and subscriber list information (“SLI”) on reasonable and nondiscriminatory rates, terms, and conditions. In particular, to allow DA providers to remain competitive, the rates charged to DA providers should be the incremental rates the LECs impute to themselves and their affiliates, and not the “presumably reasonable” rates established for listings used in printed directories.

Commenters, including new local exchange entrants, overwhelmingly concurred with the Commission’s conclusion in the *Notice of Proposed Rulemaking* that DA providers offer a critical service to emerging carriers, who often do not have the resources to provide DA services in-house. However, the alternative DA industry continues to face an arduous uphill battle to obtain directory listings and SLI from LECs, who either refuse to provide the listings to DA providers or charge unreasonable rates for the listings.

Metro One and other commenters demonstrated that the Commission has the authority, and the duty to require LECs to provide directory listings to DA providers pursuant to Section 251(b)(3), several other sections of the Communications Act of 1934, as amended, and Commission precedent. The record makes evident that the telecommunications industry is at a critical juncture where competition is beginning to flourish as intended by Congress. The Commission must act in this proceeding to ensure that new entrants have viable directory alternatives that are made available at competitive prices, thereby protecting the nascent competitive telecommunications marketplace.

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**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Provision of Directory Listing Information)	
under the Telecommunications Act of 1934,)	CC Docket No. 99-
273		
As Amended)	

REPLY COMMENTS OF METRO ONE TELECOMMUNICATIONS, INC.

Metro One Telecommunications, Inc. ("Metro One"), by its attorneys, and pursuant to Sections 1.415 and 1.419 of the Federal Communications Commission's (the "Commission") Rules, hereby respectfully submits these Reply Comments on the *Notice of Proposed Rulemaking* (the "Notice") adopted in the captioned proceeding.^{1/}

I. INTRODUCTION AND BACKGROUND

As the comments in this proceeding establish, Metro One and other alternative directory assistance ("DA") providers endure an arduous uphill battle against the incumbent local exchange carriers ("ILECs") to obtain subscriber list information ("SLI") and directory listings on nondiscriminatory and reasonable rates, terms and conditions.^{2/} The Commission and commenters have acknowledged that, as

^{1/} See *Implementation of the Telecommunications Act of 1996: Telecommunications Carriers' Use of Customer Proprietary Network Information and Other Customer Information, Third Report and Order* in CC Docket No. 96-115; *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, Second Order on Reconsideration* in CC Docket No. 96-98; *Provision of Directory Listing Information under the Telecommunications Act of 1934, As Amended, Notice of Proposed Rulemaking* in CC Docket No. 99-273 (rel. Sept. 9, 1999).

^{2/} See, e.g., Comments of Metro One at 2 ("Metro One Comments"); Comments of INFONXX, Inc. at 4-5 ("INFONXX Comments") (ILECs "are using their preferred position to match INFONXX in the marketplace, while steadfastly refusing to provide (continued...)")

the dominant providers of local exchange services, and thereby the chief repositories of SLI, ILECs have a unique advantage in the DA business because they have “the *only* complete and reliable DA databases,”^{3/} and they have the ability to control access to these critical databases.

As explained in greater detail in Part II, several commenters, including Metro One, demonstrated that Section 222(e) of the 1996 Act was designed to ensure access to SLI on nondiscriminatory rates, terms and conditions by entities that publish directories “in any format,” including Internet directory providers and DA providers. Therefore, as advocated by many commenters, the Commission must act expeditiously to ensure that DA providers can compete with ILECs by mandating access to directory listings pursuant to Sections 251(b)(3) and 222(e), with rates consisting of those under which DA listings are provided to competing carriers pursuant to Section 251(b)(3).

II. DISCUSSION

A. **There Exists No Rational Basis for Distinguishing Among Printed Directories, Internet Directories and Directory Assistance — All are Entitled to Subscriber List Information under Section 222(e)**

The record supports Metro One’s assertion that Internet directories are covered by Section 222(e). Indeed, despite the fact that Internet directories are not

2/(...continued)

INFONXX with nondiscriminatory access to directory listing information”); Comments of Time Warner Telecom at 2 (“Time Warner Comments”) (“ILECs are the only source of accurate DA listings”); Comments of Excell Agent Services, L.L.C. at 16 (“Excell Comments”).

3/ Metro One Comments at 3; *see also* *Petition of U S WEST Communications, Inc. for a Declaratory Ruling Regarding the Provision of National Directory Assistance, Memorandum Opinion and Order*, CC Docket No. 97-172, ¶ 35 (rel. Sept. 27, 1999) (“[t]he competitive advantages U S WEST enjoys with respect to the provision of directory assistance service throughout its region stem from its dominant position in the local exchange and exchange access markets.”); Excell Comments at 16 (“ILECs have an unfair competitive advantage, often promoted openly, in providing directory assistance: unique access to the most up-to-date in-region listings and a concomitant ability to control dissemination of the same.”).

specifically delineated as covered entities in Section 222(e), most commenters agree that Internet directory providers are entitled to SLI because they must be deemed to “publish directories” pursuant to Section 222(e).^{4/}

However, certain local exchange carriers (“LECs”) contend that Section 222(e)’s broad statutory language, which directs that SLI must be provided to “*any person upon request for the purpose of publishing directories in any format,*”^{5/} somehow does not encompass DA providers, because DA is not mentioned in Section 222(e). Such an arbitrary distinction between Internet directories and DA services cannot be justified, particularly where the Commission itself has recognized that “technological advances have blurred [this] distinction”^{6/} between Internet directories, traditional directory publishing and DA. Moreover, Section 222(e) makes no such distinction as to covered entities and encompasses a wide variety of directories.

1. Section 222(e) Does Not Mandate that Directories Have Identical Content or Uses

LECs employ various inconsistent arguments in an attempt to justify the differing treatment of DA. GTE claims that Internet directories are covered by Section 222(e) because Congress’s phrase “in any format” “signaled its clear intent to reach beyond the traditional, print medium of directories for purposes of Section 222(e).”^{7/} GTE further acknowledges that “[o]ne clear policy goal of Section 222(e)” is to “promote the availability of *directory offerings in whatever format customers may*

^{4/} See, e.g., Comments of GTE at 2 (“GTE Comments”) (“Including Internet directories along with other electronic directories within the scope of Section 222(e) will promote expanded choice in directory options and allow directory publishers to provide directory listings to the public in an efficient and user-friendly format”); Comments of Cincinnati Bell Telephone Co. at 2 (“Cincinnati Bell Comments”).

^{5/} 47 U.S.C. § 222(e) (emphasis added).

^{6/} Notice, ¶ 171.

^{7/} GTE Comments at 3.

use.”^{8/} Nevertheless, and despite the preceding statements, GTE claims that DA is different than directory publishing because of the type of information that is typically made available by each service.^{9/}

GTE also claims that another difference between Internet directories, paper directories and DA is the manner in which each service is used. GTE contends that “Internet directories and traditional paper directories are often used for commercial advertising and for more general information by category.” (*E.g.*, searching for information by business classification, such as “automobile dealers” and “restaurants.”)^{10/} GTE further contends that “directory assistance is typically used only for providing subscriber telephone and address information.”^{11/} As described in greater detail below, the obvious falsities of these statements demonstrate that GTE either does not understand the current DA business or purposely seeks to mischaracterize to the Commission the DA business.

Metro One's experience is that approximately 90 percent of DA requests are for businesses. DA customers frequently do not know the precise name of the business they are seeking or have no particular business in mind, but know the type or category of the business they need. Metro One and other DA providers are able to provide this information, in addition to basic name, address and telephone number information. The information offered by DA providers is virtually identical to the information provided by Internet directory providers. In addition, many DA providers offer a host of services in addition to subscriber name and address information, which

^{8/} *Id.* at 4 (emphasis added).

^{9/} *Id.* at 6.

^{10/} *Id.* at 6-7.

^{11/} *Id.* at 7.

are similar to the functions served by paper directories and Internet directories, including assisting a caller in locating a particular type of restaurant (*e.g.*, a specific type of ethnic cuisine), and locating a business near a caller's home or office that will serve the caller's needs (*e.g.*, a florist, hours a business is open, and whether credit cards are accepted).

In pointing to supposed distinctions between printed directories, Internet directories and DA, GTE misses the crux of the matter. Even if GTE's assertions regarding the differences in the offerings of directory providers were true, such differences do not alter the fact that DA providers still "publish directories." Congress did not state in Section 222(e) that directories have to contain identical, or even similar information or be maintained in any particular manner to qualify for SLI under Section 222(e). Rather, Congress's intent in enacting Section 222(e) was to ensure that a wide variety of "directory alternatives" would be made available.^{12/} As the Association of Directory Publishers aptly stated in their comments, "the phrase 'publishing directories in any format' means exactly what it says and evidences Congress' intent not to restrict the kinds of directories that could be published using SLI obtained pursuant to section 222(e)."^{13/} Thus, GTE's supposed distinctions simply fly in the face of the statutory language and Congressional intent.

^{12/} See 142 Cong. Rec. H1160 (daily ed. Feb. 1, 1996) (statement of Rep. Barton) (noting that exclusive LEC control of SLI "deprive[s] consumers . . . of cheaper, more innovative, more helpful *directory alternatives*") (emphasis added).

^{13/} Comments of the Association of Directory Publishers at 3 ("ADP Comments").

2. *Technological Advances Have Blurred the Distinction Among Printed Directories, Internet Directories, and Directory Assistance*

There is no significant difference between printed directories, Internet directories and DA services. As the record establishes, any remaining differences are quickly being blurred by technological advances and customer preferences.^{14/} Technology currently being implemented by both Internet directory providers and DA providers allows their users to access the Internet listing database or the DA database using voice recognition to request a listing and be provided the listing on the digital readout of their wireless telephone or orally by automatic voice response. Neither case requires involvement by a live operator unless the user wants such assistance, but both may involve orally “publishing” the requested listing.^{15/} The flexible standard in Section 222(e) covers directory publishers, Internet directory providers and competitive DA providers, as they are all clearly “persons” who “publish directories” under Section 222(e). The House Committee Report, “the most extensive congressional explanation of Section 222(e),”^{16/} makes clear that Section 222(e) was not intended only for publishers of printed telephone directories, by stating that “[t]his provision is intended to ensure that *persons who use subscriber information, including publishers of*

^{14/} See, e.g., ADP Comments at 9 (“the distinction between ‘oral’ directory assistance on the one hand, and printed directories on the other, has been eroded by advances in technology.”); Comments of Teltrust, Inc. at 9 (“Teltrust Comments”) (“DA providers can choose to provide directory assistance in a number of ways, including voice directory assistance via an operator, electronic online access to the listing information, or direct access to a DA database.”).

^{15/} See, e.g., Metro One Comments at 6 (“‘publish’ has several meanings that do not require the creation of format printed documents.”); ADP Comments at 9 (stating that publication may occur orally).

^{16/} Yellow Pages Publishers Association Comments at 2.

telephone directories”^{17/} The emphasis in this statement is clearly on persons who use subscriber information, and is not meant to limit how this information is published.

Other commenters agree with Metro One that the manner in which listing information currently is transmitted should not differentiate DA from Internet directories. ADP’s Comments urge the Commission “not to create classes of directories that are based on distinctions between directory assistance and directory publishing that will soon be out-of-date.”^{18/} There is *no* meaningful difference in the information included in Internet directories and DA. As such, and as the record establishes, all forms of “publishing directories” must be entitled to SLI under Section 222(e).

B. The Record Supports Mandating Access Under Section 251(b)(3) to the LECs’ Directory Assistance Databases for all Competing Directory Assistance Providers

1. *The Commission has the Authority to Extend Section 251(b)(3)’s Requirements to All Directory Assistance Providers*

One of the “Obligations of all Local Exchange Carriers,” set forth in Section 251(b)(3), is to “provide dialing parity to competing providers of telephone exchange service and telephone toll service, and the duty to permit all such providers to have nondiscriminatory access to telephone numbers, operator services, directory assistance, and directory listing, with no unreasonable dialing delays.”^{19/}

The Commission has tentatively concluded that “a directory assistance provider that provides neither telephone exchange service nor telephone toll service

^{17/} H.R. Rep. No. 104-204, Part I, 104th Cong., 1st Sess. at 89 (1995) (emphasis added).

^{18/} ADP Comments at 9.

^{19/} 47 U.S.C. § 251(b)(3).

does not fall within the class of entities that are entitled to the benefits of this section.”^{20/} Metro One urges the Commission to re-evaluate this tentative conclusion. Section 251(b)(3) does not *mandate* that competitive DA providers that offer neither telephone exchange service nor telephone toll service be entitled to the benefits of Section 251(b)(3). However, there is no impediment in this section or any other part of the Telecommunications Act of 1996 (“the 1996 Act”) to the Commission’s extending the benefits of Section 251(b)(3) to non-carriers.^{21/} It should be no surprise that competitive non-carrier DA providers were not included in Section 251(b)(3) because, like Internet directories, DA providers were not yet well established when the 1996 Act became law, and few people were aware of their existence and potential to be effective competitors in the DA business.

The Commission correctly acknowledges the conclusion of the California Public Utilities Commission that non-carrier DA providers “provide a service consistent with the competitive environment contemplated by the [1996] Act.”^{22/} The Commission clearly has the authority under several sections of the Communications Act of 1934, as amended (the “Communications Act”), to extend the protections of Section 251(b)(3) to other entities. As a general matter, under Section 4(i) of the Communications Act, the Commission “may perform any and all acts, make such rules and regulations, and issue such orders, not inconsistent with the Act, as may be necessary in the execution of its functions.”^{23/}

^{20/} Notice, ¶ 184.

^{21/} See e.g., Teltrust Comments at 4 (noting that Section 251(b)(3) “does not limit access of competing providers to directory assistance data to the competing carriers themselves.”); Excell Comments at 5.

^{22/} Notice, ¶ 156.

^{23/} 47 U.S.C. § 154(i); see also Excell Comments at 4.

2. *Alternative Directory Assistance Providers are Competitive Local Exchange Carrier Agents and Should be Entitled to Unfettered Access under Section 251(b)(3)*

While the Commission has more than ample justification as well as an obligation to extend the benefits of Section 251(b)(3) to non-carrier DA providers under Sections 201(b) and 202(a), the Commission also should make directory listings available pursuant to Section 251(b)(3) by invoking the agency principle of Section 217 of the Communications Act.

The Commission, Metro One and several other commenters have noted that new entrants to the telecommunications markets are relying increasingly on outsourced DA, because such new carriers “may not have the economies of scale to construct and maintain a directory assistance platform of their own.”^{24/} Time Warner Telecom, a competitive local exchange carrier (“CLEC”), explained that it is reliant on alternative DA providers because it “lacks the volume of traffic to self-provision DA service efficiently.”^{25/} The Commission has also recognized that independent DA providers “play an increasingly important role in ensuring that consumers receive the benefits of competition in all telecommunications-related services.”^{26/} The record establishes that, in the course of satisfying a critical need for new carriers, DA providers can be in agency relationships with carrier “principals” and such agents should be entitled to directory listings under Sections 251(b)(3) and 217.

Several commenters agreed that the Commission has the authority and precedent under Section 217 to deem DA providers to be agents acting on behalf of

^{24/} Notice, ¶ 183.

^{25/} Time Warner Comments at 1-2.

^{26/} Notice, ¶ 183.

competing carriers, and thus entitled to obtain DA listings under Section 251(b)(3).^{27/} Specifically, commenters noted that Section 217's "requirement that the acts of a carrier's agent be treated as the acts of the carrier for purposes of construing and enforcing the Act is not limited to assessing liability against a carrier for the acts or omissions of its agent; it can also encompass the agent's right to exercise the rights and obligations of the carrier principal."^{28/}

INFONXX and others demonstrate in detail that the principles of agency law, contract law, and Section 217 support treating DA providers as agents under Section 251(b)(3).^{29/} DA providers furnish their services on their carrier clients' behalf. Metro One concurs that carriers "ordinarily exert a great deal of control over how DA services are delivered to the carrier's customers."^{30/} Metro One agrees with other commenters that carrier customers typically exercise a great deal of control over how DA services are provided to the carriers' customers. The carriers' control over DA providers' provisioning of services to the carriers' customers place DA providers in the role of an agent, pursuant to the general principles of agency law.^{31/}

^{27/} See, e.g., Time Warner Comments at 7 ("Section 217 gives the Commission the authority to bestow upon the DA wholesalers all of the rights of their carrier customers."); Metro One Comments at 18; Excell Comments at 5-6.

^{28/} INFONXX Comments at 17 (citing *Communique Telecommunications, Inc. d/b/a LOGICALL*, 10 FCC Rcd 10399, 10403 (Comm. Carr. Bur. 1995)); Metro One Comments at 18; Excell Comments at 6 ("[t]his would not be the first occasion that the FCC has permitted the use of agents in a context outside of attributing liability of the agent to the principal.").

^{29/} See, e.g., INFONXX Comments at 14-18; Excell Comments at 4-7.

^{30/} INFONXX Comments at 15.

^{31/} See, e.g., *McFarlane v. Esquire Magazine*, 73 F.3d 1296, 1303 (D.C. Cir. 1996) ("[E]stablishment of the principal-agent relationship as a threshold matter is based largely upon control of one party by the other."); *Restatement* § 14N ("One who contracts to act on behalf of another and subject to the other's control except with respect to his physical conduct is an agent"); *State Police Ass'n v. IRS*, 125 F.2d 1, 7 (continued...)

Moreover, most, if not all LECs submitting comments admit that they currently make their listings available to non-carrier DA providers acting as agents of carriers or agree that they should be made available.^{32/} However, LECs contend that the listings obtained in this capacity could only be used to provide DA for the carrier for whom the DA provider is acting as an agent.^{33/} As recognized by commenters, such a restriction would be unreasonable, discriminatory, and unduly burdensome.^{34/} It would force a DA provider to pay, sometimes repeatedly, for a set of SLIs for each of its carrier customers.^{35/} This consequence of restricting a DA provider's use of directory listings obtained as an agent under Section 251(b)(3) would require a competitive DA provider such as Metro One who acts as the DA agent for thirteen CLECs and CMRS carriers to purchase thirteen sets of a LEC's listings while using only one. If DA providers were forced to make multiple purchases for the same information it "would discourage, rather than promote, competition in the directory

^{31/}(...continued)

(1st Cir. 1997) (telemarketing fundraising firm constituted agent of police association because association "retained very tight control over the method and manner of solicitation").

^{32/} *See, e.g.*, Comments of U S WEST Communications, Inc. at 5 ("U S WEST Comments"); Cincinnati Bell Comments at 11; Comments of Bell Atlantic at 5; *see also* Comments of United States Telephone Association at 7 ("USTA Comments").

^{33/} *See, e.g.*, USTA Comments at 7, n.9; U S WEST Comments at 5; Cincinnati Bell Comments at 11.

^{34/} *See, e.g.*, INFONXX Comments at 18-19 ("[r]estricting a DA provider's use of information obtained as a carrier's agent to that carrier's customers would impose a heavy administrative burden, add substantially to labor costs, and could interfere with the provision of cost-efficient and enhanced services.").

^{35/} *See, e.g., id.* at 19 ("it would be wasteful and inefficient to force the DA providers, as each carrier's agent to pay multiple times for access to the same information.").

assistance market and would limit the directory assistance options available to new competitive carriers.”^{36/}

In this situation, the LEC would be the beneficiary of a unjust preference, since the LEC incurs no additional cost if the listings are used to provide service to more than one carrier.^{37/} Moreover, LECs can, and do use their listings to provide DA for themselves and many other carriers. In addition to being contrary to the pro-competitive goals of the 1996 Act, such a discrepancy in the treatment of LECs and DA providers would be an “unreasonable and unjust practice” under Section 202(a).

The record establishes that allowing non-carrier competitive DA providers access to LEC DA listings is supported by Section 217 of the Communications Act, the common law of agency, and Commission precedent. The Commission should act to ensure that new entrants are not precluded from offering DA services, in an effective manner, by using third party DA providers. A failure to mandate access to DA listings under Section 251(b)(3) by carriers’ DA agents will stifle and cause great competitive harm to the DA and larger telecommunications industries, thereby thwarting the 1996 Act’s market opening goals.

3. *Directory Assistance Providers Offering Call Completion Services Are Covered by Section 251(b)(3)*

The record supports a Commission finding that competing providers of DA service who provide intraLATA or interLATA call completion are

^{36/} Excell Comments at 8.

^{37/} See, e.g., Metro One Comments at 14 (“[a]llowing the LEC, or any entity assigning a telephone number and collecting the associated directory assistance information, to make a profit over and above their costs of providing a service is anti-competitive and contrary to the intent of Section 251(b)(3).”).

“telecommunications carriers” as defined by the Communications Act.^{38/} As telecommunications carriers, such DA providers are entitled to acquire directory listings under Section 251(b)(3). Cincinnati Bell was the only LEC that disagreed with this position.^{39/} Other LECs submitting comments in response to the *Notice* either agreed that call completion services meet the standard in Section 251(b)(3) or were silent on this issue.

In attempting to justify this position, Cincinnati Bell ignores the Communications Act’s definition of a “telecommunications carrier” as “any provider of telecommunications services.”^{40/} “Telecommunications service” is defined as “the offering of telecommunications for a fee directly to the public, or to such classes of users as to be effectively available directly to the public, *regardless of the facilities used*.”^{41/} “Telecommunication” is defined as “the transmission, between or among points specified by the user, of information of the user’s choosing, without change in the form or content of the information as sent and received.”^{42/}

The record demonstrates that Metro One and other competitive DA providers offer call completion over several types of facilities,^{43/} including interLATA circuits leased by DA providers’ carrier clients or by the DA provider directly over the public switched telephone network. Provision of these services includes all of the

^{38/} See, e.g., Metro One Comments at 19-20; Excell Comments at 10-11; INFONXX Comments at 7.

^{39/} See Cincinnati Bell Comments at 12.

^{40/} 47 U.S.C. § 153(44).

^{41/} 47 U.S.C. § 153(46) (emphasis added).

^{42/} 47 U.S.C. § 153(43).

^{43/} See, e.g., Excell Comments at 10; INFONXX Comments at 10.

elements of providing telephone toll service and therefore qualify the DA providers to be treated as carriers, entitling these entities to the benefits of Section 251(b)(3).

4. *Sections 201(b) and 202(a) of the Communications Act Require that Directory Assistance Providers Have Access to Directory Listings Under Section 251(b)*

While Section 251(b)(3) does not specifically mandate that non-carriers be extended its benefits, Sections 201(b) and 202(a) require that the rights under Section 251(b)(3) be extended to *all* providers of competitive DA service. Metro One strongly agrees with the Commission's tentative conclusion that "non-carrier directory assistance providers cannot compete without access to directory assistance equal to that provided to providers of telephone exchange service and telephone service pursuant to Section 251(b)(3)."^{44/}

Commission precedent and the record support the conclusion that LECs' refusals to provide DA listings, or to charge DA providers unreasonable rates (*i.e.*, higher rates than LECs impute to themselves) for access to their DA listings are unjust and unreasonable charges and practices, and therefore, unlawful under Section 201(b) of the Communications Act. In charging more than their incremental costs, LECs also engage in "unjust or unreasonable discrimination" in contravention of Section 202(a).^{45/} The Commission should invoke its Section 4(i) authority to extend Section 251(b)(3) to all DA providers, and thus prevent continued violations of Sections 201(b) and 202(a) of the Communications Act.

The Commission already has extended relevant portions of Section 251(b)(3) to cover paging carriers, "entities that are not expressly covered by its terms but that compete with covered entities and would be at a competitive advantage without

^{44/} Notice, ¶ 190.

^{45/} See, e.g., Metro One Comments at 20; Excell Comments at 13.

the protections of Section 251(b)(3).^{46/} Specifically, in the *Local Competition Second Report and Order*, the Commission relied on the grant of authority under Section 202(a) of the Communications Act, in order to avoid an unjust practice and the imposition of unjust fees under Section 201(b) of the Communications Act, and “required incumbent LECs to provide access to telephone numbers to entities, such as paging carriers, that are not providers of telephone exchange service or telephone toll service.”^{47/} The Commission reasoned that “paging carriers are increasingly competing with other commercial mobile radio service (“CMRS”) providers, and would be at an unfair competitive disadvantage if they alone could be charged discriminatory fees.”^{48/} In the similar case of DA providers, “a decision not to extend the protections of Section 251(b)(3) would disadvantage Directory Assistance Providers and would appear to endorse the perpetuation of unjust charges and unjust practices.”^{49/} The Commission must act expeditiously to ensure that DA providers, who are the main source of competition to ILECs’ DA, are not placed at a competitive disadvantage in obtaining DA listings.

C. Directory Assistance Providers Must Obtain the Same Rates, Terms and Conditions for Subscriber List Information and Directory Listings as the LECs Offer Themselves

There is no justification for allowing LECs to impose different rates, terms and conditions for SLI or directory listings, whether acquired under Section

^{46/} Excell Comments at 12 (quoting Letter from Gerard L. Waldron and Mary Newcomer Williams, Counsel for INFONXX to Chief, Common Carrier Bureau, filed Aug. 10, 1999).

^{47/} Notice, ¶ 189 (citing *Local Competition Second Report and Order*, 11 FCC Rcd 19392, 19538 (1996)).

^{48/} *Id.*

^{49/} Excell Comments at 12-13.

222(e) or 251(b)(3) or whether such listings are used for DA, Internet directories or publishing paper directories. In fact, in order for the alternative DA market to remain competitive with ILECs, it is necessary that DA providers have access to LECs' DA listings in the same manner and at the same rates that the LECs' provide to themselves.^{50/}

As described in Metro One's Comments, LECs do not own the SLI.^{51/} LECs easily acquire the information by virtue of being the dominant telephone service providers. SLI is willingly provided by most of the LECs' telephone customers so the customers can have service established, have their listing published in the printed directory and have an available listing when callers seek their numbers through *all* DA services.

Allowing LECs, or any entity assigning telephone numbers and collecting the associated SLI to charge over and above their costs of providing the service is anti-competitive and contrary to the intent of the 1996 Act.^{52/} The legislative history establishes that Congress intended that "in determining what constitutes a

^{50/} See, e.g., Metro One Comments at 14; Time Warner Comments at 5-6 ("LECs must provide to carriers and non-carriers alike access to DA databases on the same terms and conditions that LECs provide those listings databases to themselves . . . this obligation requires that non-carriers and carriers pay the same price as LECs impute to their own DA service for access to the DA database."); Excell Comments at 2 ("in order to be competitive with the established directory assistance services of the RBOCs and other LECs, [Excell] should be afforded access to the directory assistance listings of the LECs in the same manner the LEC afford access to themselves.").

^{51/} Metro One Comments at 14.

^{52/} See, e.g., Metro One Comments at 14; Excell Comments at 17 ("the future of [DA providers'] ability to innovate in a cost efficient manner, depends on access to raw directory assistance listings in a single format at a single price – which should be no greater than the cost the LECs impute to themselves."); INFONXX Comments at 13 ("Independent DA providers have played and will continue to play a critical role in assuring the competitive availability of directory assistance services from sources other than the ILECs. But to continue to fulfill this function, independent DA providers must have access to SLI at cost-based prices pursuant to Section 251.").

reasonable rate . . . the most significant factor should be the incremental cost of delivering that listing to the requesting party.”^{53/} Several commenters noted that ILECs are exploiting their dominant position in the local exchange and DA markets, by “refusing to share their directory assistance information with competitive DA providers or by charging exorbitant prices for access to the information.”^{54/} Metro One believes the Commission’s presumptively reasonable rates are inaccurate as applied to DA because the costs as submitted by LECs have not been subjected to any objective analysis for reasonableness, validity and accuracy. Metro One believes the actual costs incurred by the LECs and therefore imputed to themselves is close to the rates ordered by several state commissions.^{55/}

The Commission recognized in the *Notice* that oral DA providers “cannot compete without access to directory assistance equal to that provided to providers of telephone exchange service and telephone toll service pursuant to Section 251(b)(3).”^{56/} Oral DA providers compete with ILECs, interexchange carriers and others who have obtained directory listings under Section 251(b)(3). As such, DA providers should receive DA listings under Section 251(b)(3) rates.^{57/}

III. CONCLUSION

WHEREFORE, for the foregoing reasons, Metro One respectfully requests that the Commission take such actions as are consistent with Metro One’s

^{53/} 142 Cong. Rec. § 184 (statement of Rep. Paxon).

^{54/} INFONXX Comments at 4.

^{55/} See Metro One Comments at 13, n.27.

^{56/} *Notice*, ¶ 190.


^{57/} See, e.g., Metro One Comments at 11 (“rates in all instances should not exceed the incremental costs of providing the directory listings plus a reasonable allocation of common costs and overhead.”).

Comments and Reply Comments in this proceeding and advance Congress's intent to ensure that consumers have access to a wide variety of directory alternatives. Metro One requests that the Commission order that competitive DA providers have access to SLI and directory listings on nondiscriminatory and reasonable rates, terms and conditions, pursuant to the statutory language and intent of the 1996 Act.

Respectfully submitted,

METRO ONE TELECOMMUNICATIONS, INC.

Its Attorneys

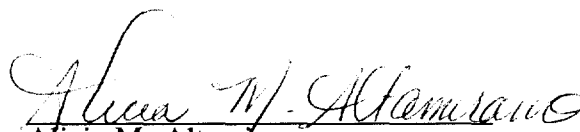
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October 13, 1999

CERTIFICATE OF SERVICE

I, Alicia M. Altamirano, do hereby certify that on this 28th day of October, 1999, I have caused a copy of the foregoing REPLY COMMENTS OF METRO ONE TELECOMMUNICATIONS, INC. to be served via first-class United States Mail, postage pre-paid, upon the persons listed on the attached service list.


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